



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: National Systems Management Corporation

File: B-242440

Date: April 25, 1991

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DIGEST

Elimination of a technically acceptable, lower cost proposal from the competitive range without discussions, leaving a competitive range of one, was unreasonable where the record shows that weaknesses in the lower cost proposal were considered minor and could be easily addressed during discussions to make it stronger, and that the awardee's evaluated technical superiority was not such that no other offeror had a reasonable chance for award.

DECISION

National Systems Management Corporation (NSM) protests the award of a contract to Strategic Financial Planning Systems, Inc. (SFPS) under request for proposals (RFP) No. N60921-90-R-A146, issued by the Naval Surface Warfare Center, Dahlgren, Virginia, for analytical and engineering support for cost, budget, and schedule analyses for the Navy's development and acquisition of weapon systems. The successful contractor will perform such services as life cycle cost studies, computer model application and modification, cost/schedule development and control, and parametric cost estimating. NSM contends that the Navy improperly excluded its lower cost, technically acceptable offer from the competitive range and only conducted discussions with SFPS.

We sustain the protest.

The RFP, issued as a total small business set-aside, contemplated the award of a cost-plus-fixed-fee contract for a 5-year period. The RFP stated that award would be made to the offeror whose proposal offered the "best value" to the government, considering the following evaluation factors:

1. Technical Capability
 - a. Proposed approach
 - b. Personnel
 - c. Corporate Experience
2. Cost

The RFP stated that the "proposed approach" subfactor was approximately 1.5 times more important than the "personnel" and "corporate experience" subfactors, which were of equal weight. The "technical capability" factor was stated to be approximately 4 times more important than "cost." Cost was to be assessed for cost realism to determine the offeror's probable cost to meet the contract requirements, and the lowest evaluated cost offer was to receive the highest score for cost while other offers would receive a proportion of the best score based upon their position relative to the lowest evaluated cost offer.

The Navy received six offers, including the offers of NSM and SFPS. The initial technical and cost proposals were evaluated as follows:

<u>Offeror</u>	<u>Tech Score</u> (80 pts)	<u>Cost Score</u> (20 pts)	<u>Total Score</u> (100 pts)
SFPS	78.40	13.64	92.04
Offeror A	53.95	19.00	72.95
NSM	54.88	16.77	71.65
Offeror B	48.93	20.00	68.93
Offeror C	35.05	---	--- <u>1/</u>
Offeror D	28.45	---	---

1/ The Navy did not evaluate the cost proposals of offerors C and D because they were found to be technically unacceptable.

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The proposal of SFPS was found to be fully responsive to the RFP requirements with no weaknesses. SFPS' superior technical score primarily reflected its perfect scores in the less important subfactors "personnel" and "corporate experience."2/

NSM's proposal was also found to be technically acceptable but to contain "weaknesses which could affect performance under the contract." Specifically, the Navy expressed concern under the technical approach subfactor that NSM's proposal did not demonstrate the firm's knowledge of specific Navy or Marine Corps cost data bases, software, and computer models, and did not address the total acquisition cycle with respect to cost schedule and budget and tracking analysis. Under the "personnel" subfactor, the Navy expressed concern that the resume of NSM's proposed computer scientist did not show an in-depth knowledge of the majority of software packages identified in the RFP or show experience in Marine Corps systems. NSM's proposal was downgraded under the "corporate experience" subfactor for failing to show specific experience in Marine Corps systems. The Navy's technical evaluator states that "information provided by NSM's proposal indicated that it was technically acceptable but could have been made even stronger if all of the noted weaknesses had been fully and adequately addressed."

The contracting officer determined from the evaluation of initial proposals that only SFPS, the second highest cost offeror, should be included in the competitive range for the conduct of discussions. The offers of C and D were excluded as technically unacceptable. Regarding the offers of NSM and offerors A and B, which were substantially lower cost than SFPS', the contracting officer determined that the offer of "SFPS remains so substantially superior to the other three offerors, as to make it impossible for the other three to significantly close the gap without a major rewrite." Accordingly, since the contracting officer concluded that the offers from NSM and offerors A and B, although technically acceptable, did not have a reasonable chance of being selected for award, they were eliminated from the competitive range.

2/ Our discussion of the relative merits of the offerors' technical proposals and their proposed costs is necessarily general in light of our protest recommendation to reopen the competition.

The Navy conducted a cost realism analysis of SFPS' proposal and conducted cost negotiations with that firm.^{3/} On December 14, 1990, the Navy awarded a contract to SFPS in the amount of \$2,685,768, which was significantly less than SFPS' proposed cost. This protest followed.^{4/}

NSM contends that the Navy's determination to retain only SFPS' second highest cost offer in the competitive range and to exclude NSM's lower cost, technically acceptable offer was improper, particularly since the weaknesses identified in NSM's technical proposal were minor and could have been easily addressed in discussions. In response, the Navy admits that NSM's technical weaknesses were of a "minor nature" that could have been addressed without a major revision of NSM's technical proposal but argues that correcting these weaknesses alone would not make NSM's offer technically competitive with SFPS' superior technical proposal.

The Competition in Contracting Act of 1994 requires that if an agency conducts discussions, it do so with all responsible offerors in the competitive range. 10 U.S.C. § 2305(b)(4)(B) (1988). The Federal Acquisition Regulation (FAR) provides that the competitive range must include all proposals that have a reasonable chance of being selected for award and that any doubt as to whether a proposal is in the competitive range should be resolved by inclusion. FAR § 15.609(a). While the determination of whether a proposal is in the competitive range is principally a matter within the reasonable exercise of discretion of the procuring agency, we closely scrutinize any evaluation that results in only one offeror being included in the competitive range, in view of the importance of achieving full and open competition in government procurement. Coopers & Lybrand, 66 Comp. Gen. 216 (1987), 87-1 CPD ¶ 100; Besserman Corp., 69 Comp. Gen. 252 (1990), 90-1 CPD ¶ 191. If

^{3/} The Navy did not conduct detailed cost realism assessments of NSM's and offeror A's and B's proposals but verified the firms' rates with the Defense Contract Audit Agency, "with no significant variations noted." The Navy concluded that a comprehensive cost realism assessment of the firms' proposals "would result in a figure within 5 [percent] of the their proposed cost-plus-fixed-fee."

^{4/} Contract performance has not been suspended since the agency did not receive notice of the protest within 10 calendar days following contract award. See 4 C.F.R. § 21.4(b) (1991).

there is a close question of acceptability; if there is an opportunity for significant cost savings; if the inadequacies of the solicitation contributed to the technical deficiency of the proposals; or if the informational deficiency reasonably could be corrected by relatively limited discussions, then inclusion of the proposal in the competitive range and discussions are in order. Besserman Corp., 69 Comp. Gen. 252, supra.

Here, the protester's elimination from the competitive range rested solely on the contracting officer's determination that NSM's technically acceptable offer could not become technically competitive without a "major rewrite." This conclusion is inconsistent with the agency's concession that the only weaknesses identified in NSM's proposal were considered minor and easily correctable. In this regard, the protester, during the protest conference, provided written, "quick" responses to the identified weaknesses, and the agency admits in its conference comments that these responses "addressed [the weaknesses] to a large degree." Given this admission and the statement of the agency's technical evaluator that NSM's proposal would have been stronger if the identified weaknesses had been addressed, we do not think that the Navy could reasonably find that NSM would not have had a reasonable chance of receiving award in this best-value procurement, particularly given that NSM's proposed cost was significantly lower than SFPS'.

The Navy argues that the weaknesses identified in NSM's proposal were so minor that addressing these weaknesses would not alone make NSM's offer competitive. The agency contends that SFPS' offer was so superior technically that NSM would have to rewrite its proposal, apart from addressing the evaluated weaknesses, to bring it up to the superior level of SFPS' in order to have a reasonable chance for award.

The record does not support the agency's conclusion, at this stage in the procurement, that NSM did not have a reasonable chance for award. While it is true that the proposal of SFPS, the incumbent contractor, was found to have numerous strengths and no identified weaknesses, NSM's proposal was also evaluated as containing several strengths and only minor weaknesses that could have been easily addressed in discussions. The Navy's argument is essentially that NSM could not have a reasonable chance for award because its offer could not be improved to the point of being the technical equal of SFPS' proposal. However, there is no requirement that NSM's proposal be the technical equal of SFPS' to have a reasonable chance for award--cost also plays a role.

The purpose of the competitive range is to select those offerors, having a reasonable chance for award, with which the agency will negotiate. FAR § 15.609(a). Here, the record shows that NSM's technically acceptable offer would have been improved through discussions, which would have resulted in a higher technical score.^{5/} Given NSM's substantially lower cost, we do not believe that the contracting officer could decide, even in light of the RFP evaluation scheme that weighted technical considerations greater than cost, that NSM would have no reasonable chance for award. Under the circumstances of this case, that conclusion appears to be a premature cost/technical tradeoff, to be made at the conclusion of negotiations to determine which offer represents the best value to the government.^{6/}

Accordingly, we find that the record does not substantiate that SFPS' technical superiority was such that no other firm would have had a reasonable chance for award after meaningful discussions were held. In this regard, the Navy's report on the protest does not articulate any reasons why SFPS' technical advantage was so overwhelming that technically acceptable, lower cost offers had no reasonable chance of being selected for award if included in the competitive range.^{7/} Therefore, the Navy could not reasonably exclude NSM

^{5/} NSM's technical proposal was downgraded approximately 25 percent under technical approach, 50 percent under personnel, and 30 percent under corporate experience.

^{6/} A cost/technical tradeoff made before discussions is improper because the technical rankings and offered prices could be significantly altered after the conduct of discussions. See Pan Am Support Servs., Inc.--Recon., 66 Comp. Gen. 457 (1987), 87-1 CPD ¶ 512. The Navy argues, however, that the revisions necessary to make NSM's offer competitive with SFPS' would probably increase NSM's cost offer. NSM denies that it would be required to increase its cost in this regard. We need not address the parties' speculation regarding this matter since we think it more appropriate that offerors, under these circumstances, be given an opportunity to address the agency's concerns and submit revised price offers. In this regard, we have recognized that it is not uncommon for offerors to lower their prices in the later stages of negotiation. See Federal Servs., Inc., B-231372.2, Sept. 6, 1988, 88-2 CPD ¶ 215.

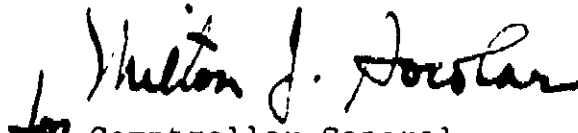
^{7/} Our review of the evaluation documentation also does not indicate that SFPS had such an overwhelming technical superiority that no other offeror could receive award no matter how much it reasonably improved its technical proposal or how much it lowered its cost.

(or the similarly situated offerors A and B) from the competition for "relatively minor" weaknesses.^{8/} See Besserman Corp., 69 Comp. Gen. 252, supra.

The protest is sustained.

We recommend that the Navy reopen negotiations with NSM and all other offerors who should have been included in the competitive range, conduct meaningful discussions, and request a new round of BAFOs. If a firm other than SFPS is selected as a result of the agency's evaluation of BAFOs, then the Navy should terminate SFPS' contract for the convenience of the government and make award to that firm.

Under the circumstances, the protester is entitled to its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1). NSM should submit its claim for such costs directly to the Navy. 4 C.F.R. § 21.6(e).


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^{8/} As indicated above, any doubt regarding whether a proposal should be included in the competitive range should be resolved in favor of inclusion. FAR § 15.609(a).